

1 weight. Do you see that?

2 A Yes.

3 Q And that would be a highly rivalrous good;  
4 correct?

5 MR. SEIVER: I'm going to object. It may  
6 be depicted that way on the chart. I don't know if  
7 he's trying to have her authenticate this chart as  
8 being an accurate --

9 JUDGE SIPPEL: I'm not altogether clear  
10 what the purpose of this is, either. I'm having  
11 enough trouble with pole space. Now we're going with  
12 wheat and fish.

13 (Laughter.)

14 JUDGE SIPPEL: I know what you are trying  
15 to do, but I think that Ms. Kravtin -- I think she has  
16 explained this pretty well in her testimony of how she  
17 views rivalrous and nonrivalrous. If you've got -- I  
18 think you may have another point that you're trying to  
19 make here.

20 MR. LANGLEY: I do, Your Honor, and if I  
21 could ask just a couple more questions, I'll leave  
22 this.

1 JUDGE SIPPEL: All right.

2 BY MR. LANGLEY:

3 Q Ms. Kravtin, in this chart at least wheat  
4 is on the highly rivalrous side of the chart; correct?

5 A Well, it's on the low nonrivalrous side,  
6 as this author has chosen to present this paradigm.

7 Q And then on the other side of the chart,  
8 the high nonrival good is the national defense?

9 A Yes.

10 Q And, Ms. Kravtin, where on that chart  
11 would you place pole space?

12 MR. SEIVER: I would object. Now he's  
13 trying to turn this chart into expert testimony for  
14 himself. If he wants to bring his own expert to come  
15 in and testify as to where it goes, that's fine; but  
16 to ask Ms. Kravtin, for the first time having seen the  
17 document, that she's -- and a chart she hasn't used,  
18 hasn't relied on, hasn't testified about, to make it  
19 part of this case and the evidence in her testimony is  
20 improper.

21 MR. LANGLEY: Your Honor, if I can  
22 authenticate the chart through her, then I'm still

1 entitled to cross-examine her on it. She said as an  
2 economist that she understands what this chart  
3 represents.

4 JUDGE SIPPEL: I'll take this to be, at  
5 least a good part of it, in connection with a voir  
6 dire, if I'm saying that right.

7 MR. LANGLEY: You probably are.

8 JUDGE SIPPEL: Let's see if we can get a -  
9 - I'm not going to require you to answer, but can you  
10 answer that question?

11 THE WITNESS: Well, I can certainly speak  
12 to my opinion as to the nonrivalrousness and the  
13 exclusion properties of poles because I believe I do  
14 that in my testimony. Because I have testimony that  
15 testified -- excuse me -- that has a general  
16 proposition, and this is certainly consistent with the  
17 discussion in the APCo decision, that poles tend to be  
18 of a nonrivalrous condition, and that poles tend to be  
19 as provisioned by Gulf in a situation where others do  
20 not have to be excluded because the whole basis of the  
21 APCo decision is to look at more or less the  
22 exceptions to that rule. Where can we identify

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1 situations where there is a rivalrous condition on the  
2 pole, and that there has been exclusion.

3 And my testimony also addresses those  
4 exceptions or cases where you could identify that you  
5 could put pole space more toward the left lower right-  
6 hand corner.

7 But for the most part, it would go to the  
8 upper right-hand quadrant, but there would be  
9 conditions, there would be conditions under which that  
10 pole could be considered in the lower -- toward the  
11 lower left, and those are conditions that would  
12 satisfy under APCo the conditions under which the  
13 utility could seek a rate in excess of marginal costs.

14 So that's how I would answer it based on  
15 what I have testified to, and I think we can, you  
16 know, kind of view it in light of that paradigm,  
17 although I find the way he's presented it a bit  
18 confusing as far as presentation.

19 BY MR. LANGLEY:

20 Q So would it be your testimony, Ms.  
21 Kravtin, that this pole on the screen, which is page  
22 40 of Gulf Power Exhibit 42, is more like the national

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1 defense than wheat?

2 MR. SEIVER: Objection, Your Honor.

3 JUDGE SIPPEL: I'll sustain that one, yes.

4 MR. LANGLEY: Your Honor, may I be heard  
5 on this? One of the key issues in this case is how  
6 this concept of rivalrous property applies, and I am  
7 entitled to test the parameters of her definition.

8 JUDGE SIPPEL: Yes, but you're trying to  
9 peg her into a hole that's been dug by Mr. Bernanke,  
10 and I don't think that's fair. I mean, you know, I  
11 just don't -- that's going -- that's taking it too  
12 far.

13 MR. LANGLEY: Well, Your Honor, I will --

14 JUDGE SIPPEL: I think she has been very  
15 good in terms of going with you as far as she has on  
16 this. She has placed pole space some place along this  
17 graph.

18 MR. LANGLEY: I will withdraw a placement  
19 on the graph and simply restrict the question to this:

20 BY MR. LANGLEY:

21 Q Ms. Kravtin, do you liken the pole  
22 depicted in Gulf Power Exhibit 42, page 40, more to

1 the national defense or to wheat?

2 MR. SEIVER: Objection. Same objection,  
3 Your Honor.

4 JUDGE SIPPEL: Sustained.

5 BY MR. LANGLEY:

6 Q Ms. Kravtin, if you would, please, turn to  
7 page 15 of your testimony.

8 Ms. Kravtin, at the top of page 15 of your  
9 direct testimony, there is a header there. Do you see  
10 that?

11 A Yes, I do.

12 Q Is that header a part of your testimony?

13 A The header we're reading on page 15 of my  
14 testimony?

15 Q The one that -- I'm sorry. I didn't mean  
16 to interrupt you so go ahead with what you were  
17 saying.

18 A Well, we're reading it on page 15 of my  
19 testimony, so if your question is, is this text in my  
20 testimony, the answer is yes.

21 Q No, I'm asking about the header. Is that  
22 part of your testimony, or is that something that your

1 lawyers have inserted?

2 MR. SEIVER: Why don't you identify the  
3 line numbers for us so she knows what you're talking  
4 about?

5 BY MR. LANGLEY:

6 Q Lines 1 through 3.

7 A The attorneys didn't insert anything in  
8 the testimony other than to designate the header  
9 "confidential." This is my testimony.

10 Q I was just making sure that that was part  
11 of it, that the header was. Because I was going to  
12 ask you some questions about it, and if it is  
13 something that Mr. Seiver had put in, I didn't want to  
14 ask you questions about it. Is that okay?

15 A And I'm answering more generally that all  
16 the text in the testimony is my testimony, inclusive  
17 of headers.

18 Q Did you write --

19 A Other than the one indicating  
20 "confidential."

21 Q Did you write this testimony, Ms. Kravtin?

22 A Yes, I did.

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1 Q You penned the questions and answers  
2 yourself?

3 A Yes, I did.

4 Q Meaning the questions were not posed to  
5 you by counsel for the complainants?

6 A That is correct. When I draft testimony,  
7 I draft the questions as well.

8 Q So you didn't just give the answers, but  
9 you also provided the questions?

10 MR. SEIVER: Objection; asked and  
11 answered.

12 JUDGE SIPPEL: Sustained.

13 BY MR. LANGLEY:

14 Q Ms. Kravtin, the header on page 15 reads:

15 "Section 224 of the Communications Act and  
16 the FCC rate formula implemented pursuant to section  
17 224 reflect economically appropriate cost allocation  
18 principles." That is your testimony; correct?

19 A Yes, it is.

20 Q And in saying that, I assume you were  
21 including both the cable formula and the telecom  
22 formula within that?

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1           A       Well, my testimony in this proceeding is  
2           in regard to the cable rate formula, but certainly the  
3           telecom formula is also included in section 224.

4           Q       Do you also agree that the telecom formula  
5           reflects economically appropriate cost allocation  
6           principles?

7           A       Yes.

8           Q       And you are aware, Ms. Kravtin, that the  
9           telecom rate differs somewhat from the cable rate?

10          A       Yes, I'm well aware of that.

11          Q       And you are aware that the key distinction  
12          between the two is that the telecom rate allocates the  
13          unusable space equally among the attachers to the  
14          pole?

15          A       I don't know if I would characterize it  
16          that way. I view the two formulas as having different  
17          space allocation methodologies for allocating both the  
18          usable and unusable space of the pole. Both formulas  
19          allocate the usable and unusable space at the pole,  
20          but according to a different space allocator  
21          methodology.

22          Q       But the way the telecom rate allocates

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1 unusable space is economically appropriate?

2 A I think I just explained in my prior  
3 answer that I didn't agree with the way you're  
4 describing the allocation of usable space. There are  
5 three parts to both formulas: the investment, the  
6 carrying charge, and the space allocator. So where  
7 the two formulas differ is in terms of the space  
8 factor allocation, the method by which they are  
9 allocating the entirety of the pole to either a cable  
10 company or a telecom company.

11 Q And right now I'm asking you about the  
12 space allocation factor in the telecom rate.

13 A Yes.

14 Q Is that economically appropriate?

15 MR. SEIVER: I'm sorry. For what purpose?  
16 Objection. "Economically appropriate" in the world or  
17 --

18 MR. LANGLEY: Well, this is her testimony.  
19 I'm just asking her questions --

20 JUDGE SIPPEL: Well, I'm going to overrule  
21 the objection at this point. The witness hasn't  
22 indicated that she is having difficulty answering

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1 these questions. So, you know, I mean you raised some  
2 excellent objections, And I think they have been  
3 sustained, but let's see what we can do here.

4 BY MR. LANGLEY:

5 Q Ms. Kravtin, is the way the telecom  
6 formula allocates unusable space an economically  
7 appropriate cost allocation principle?

8 A I think this is now the third time. The  
9 way you are asking me the question, I am not able to  
10 answer it because I don't view the telecommunications  
11 formula as allocating unusable space different in  
12 terms of -- the space factor allocator is different,  
13 but both the cable formula and telecom formula  
14 allocate the cost of the total pole, including usable  
15 and unusable space.

16 Now if you ask me in terms of what I  
17 believe about the space factor allocator in particular  
18 and the methodology used in that, then I will try to  
19 answer your question.

20 Q That was my question, Ms. Kravtin.

21 A I'm sorry, that's not the way I heard it.  
22 I apologize.

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1           Q           Is the space allocation factor in the  
2 telecom formula an -- does it reflect economically  
3 appropriate cost allocation principles?

4           A           Again I testified to, and we had this  
5 discussion in deposition, I have testified to this on  
6 numerous occasions actually where I have testified on  
7 both the use of the telecom formula or the cable  
8 formula, is that I believe the appropriate cost  
9 allocation principle is to allocate based on usage of  
10 the pole.

11                   Now the telecom formula applies a slightly  
12 different methodology in the sense that it does  
13 include an allocation -- coming up the space  
14 allocator, it includes in that allocation factor some  
15 portions, two-thirds of the unusable space divided  
16 over the number of attachers. So it's just a  
17 different formula of trying to allocate the total cost  
18 of the poles. And I believe that a strict usage-based  
19 allocator -- again, we are not talking about what the  
20 total costs that are being allocated; we are talking  
21 about the design of the allocator. I've testified  
22 that a strict usage-based allocator is most consistent

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1 with cost-causation principles.

2 In an appropriate world, you know, all the  
3 attachers would be charged using a strictly usage-  
4 based formula, which is in the cable rate.

5 I also understand that in the more complex  
6 real world and in the context of the  
7 Telecommunications Act, where Congress was looking to  
8 go to a different paradigm, where there are multiple  
9 attachers and trying to encourage telecom competition  
10 and all that, whatever, that, you know, they augmented  
11 the cable formula to be a little different in the case  
12 of telecom. But I believe that the telecom formula  
13 generally is more consistent with cost-causation  
14 principles than, for example, Gulf's replacement cost  
15 methodology, which is producing a rate some 10 times  
16 greater than the cable rate.

17 Certainly the differences between the  
18 cable rate and the telecom rate are relatively small  
19 compared with these other alternatives. And that is  
20 consistent with what I've testified here and what we  
21 discussed in deposition, but also other cases where I  
22 have testified on the telecom rate and the use of the

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1 telecom rate to telecom carriers.

2 Q Is that it? Is that the end of your  
3 answer?

4 A Yes.

5 Q Do you need to change your testimony then  
6 on page 15 of your prefiled written direct?

7 MR. SEIVER: Objection, Your Honor.

8 JUDGE SIPPEL: Sustained. No -- I mean I  
9 overrule the objection. Go ahead. Go ahead, Mr.  
10 Langley.

11 BY MR. LANGLEY:

12 Q Ms. Kravtin, do you need to change your  
13 testimony on paragraph 15 of your direct?

14 A I do not because I testified that I do  
15 believe a telecommunications formula is consistent  
16 with cost-causation principles. You in your question  
17 narrowed me to that space factor allocator. And which  
18 I said again is, you know, a matter of degrees, that  
19 I believe that a pure space allocator based on sheer  
20 usage, straight usage, as in the cable formula, was  
21 most consistent with cost causation, but that  
22 generally a telecom formula still produced a rate that

1 was consistent with trying to attribute the cost of a  
2 pole, the cost of attachment overall to a factor.

3 So I don't see an inconsistency, nor has  
4 the FCC in regulating and implementing both rates, and  
5 nor have the courts found that the differences between  
6 the two, you know, override the ultimate value, in  
7 fact, that both recover more than marginal costs. And  
8 both relate generally to cost causation.

9 Q You are offering a legal opinion as to  
10 what the courts and the FCC have found?

11 A No, I am not. I am not rendering a legal  
12 opinion. I am just citing to the existence of those  
13 decisions that specifically address the existence of  
14 these two different rates and how they relate to one  
15 another.

16 MR. LANGLEY: Your Honor, I'm at a decent  
17 stopping point if we need to take our afternoon break,  
18 or I can keep going.

19 JUDGE SIPPEL: No, I think the witness has  
20 been on the stand long enough. I think we should take  
21 a recess, short recess.

22 I just want -- will you move into another

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1 area then?

2 MR. LANGLEY: We will.

3 JUDGE SIPPEL: Thank you.

4 (Laughter.)

5 MR. LANGLEY: Are you riveted, Your Honor?

6 JUDGE SIPPEL: I'm riveted.

7 (Laughter.)

8 JUDGE SIPPEL: This document has been  
9 identified, but it's not been moved into evidence. Do  
10 you want to move it into evidence at this time?

11 MR. LANGLEY: What I had intended to do  
12 was move it into the evidence at the end of my cross-  
13 examination.

14 JUDGE SIPPEL: Okay. Just so it doesn't  
15 get forgotten.

16 We are in recess until -- come back at 10  
17 minutes of 3. Thank you.

18 (Recess.)

19 JUDGE SIPPEL: We are back on the record.  
20 Mr. Langley, continue.

21 BY MR. LANGLEY:

22 Q Ms. Kravtin, are you ready?

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1 A I am.

2 Q I want to talk to you a little bit about  
3 full market value. Do you have an understanding of  
4 what the term full market value means?

5 A Yes, I do.

6 Q Is that what a hypothetical willing buyer  
7 would pay a hypothetical willing seller?

8 A As defined in the concept of the general  
9 appraisal method of fair market value, yes, whether  
10 neither is subject to compulsion to buy or sell.

11 Q And that's the standard fair market value  
12 definition, at least?

13 A It's one definition. Obviously the  
14 application of it will vary from situation to  
15 situation.

16 Q Ms. Kravtin, let's go to page 41 of your  
17 written direct testimony. And before I ask you a  
18 question about that, the willing buyer-willing seller  
19 standard accounts for both sides to the transaction,  
20 does it not?

21 JUDGE SIPPEL: I think it's self-evident.

22 MR. LANGLEY: I believe it is, too, Your

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1 Honor. I wanted this witness to confirm that.

2 THE WITNESS: Yes, with the addition that  
3 I mentioned in terms of neither being under compulsion  
4 to buy or sell.

5 BY MR. LANGLEY:

6 Q Ms. Kravtin, on page 41 of your testimony  
7 at the top -- are you there? Do you have your  
8 testimony in front of you?

9 A Yes.

10 Q You testify that in a truly competitive  
11 market -- and I'm going to paraphrase, and you can  
12 correct me if this is the wrong paraphrase.

13 "In a truly competitive market, prices  
14 tend to be bid down to levels approximating marginal  
15 costs."

16 Is that correct?

17 A Yes.

18 Q But that isn't a truly competitive market;  
19 correct?

20 A Yes.

21 Q And real-world markets out there in the  
22 world are not truly competitive, are they?

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1           A       No, real-world markets aren't going to  
2 necessarily fit the theoretical conditions of a truly  
3 competitive market, the same as we discussed earlier  
4 this morning, that you wouldn't necessarily have that  
5 true monopoly, either; that there are conditions.  
6 Then you look at the real-world markets and you  
7 determine which part of the continuum they most likely  
8 fall near.

9           Q       And so when you talk about pricing being  
10 bid down toward marginal cost, you are assuming a  
11 market that does not exist?

12          A       I'm not assuming anything. I mean, you  
13 know, I'm talking -- I'm talking about the theoretical  
14 standard for a competitive market.

15          Q       A comparative -- a competitive market  
16 which does not exist; correct?

17          A       I'm not talking about any specific market.  
18 I'm talking here in terms of theoretical concept.

19          Q       Ms. Kravtin, if you would refer back to  
20 what we marked earlier for identification as Gulf  
21 Power Exhibit 71. And this is on the second page of  
22 that exhibit.

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1           A           I'm sorry, which page of the exhibit,  
2           please?

3           Q           It's the second page of that exhibit. And  
4           do you see under the heading "Imperfect Competition,"  
5           do you see that heading?

6           A           Yes.

7           Q           Would you read, please, the first sentence  
8           underneath that heading?

9                       MR. SEIVER: Your Honor, could I just make  
10          an objection, as I did before, to allow the witness to  
11          look at as much of she needs of this before any  
12          questions are asked?

13                      JUDGE SIPPEL: If you want the witness to  
14          read to herself before she answers.

15                      MR. LANGLEY: Are you asking Mr. Seiver?

16                      JUDGE SIPPEL: I'm asking you.

17                      MR. LANGLEY: I don't want her to read  
18          anything to herself. I want her to read the first  
19          sentence underneath "Imperfect Competition."

20                      JUDGE SIPPEL: All right. I'll overrule  
21          the objection.

22                      THE WITNESS: Sure.

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1           "The perfectly competitive market is an  
2 ideal. The actual markets we encounter in every-day  
3 life differ from the ideal in varying degrees."

4           BY MR. LANGLEY:

5           Q     You agree with that statement?

6           A     Yes. I believe that's consistent with the  
7 answer I just gave.

8           Q     And there are different forms of imperfect  
9 competition, aren't there?

10          A     Well, can you explain what you mean by  
11 forms?

12          Q     Well, how about with reference to the  
13 second page of Gulf Power Exhibit 71?

14               MR. SEIVER: Objection, Your Honor. If we  
15 are going to go through and have this witness somehow  
16 or other authenticate this exhibit that she has not  
17 seen before today, and we don't have Mr. Bernanke  
18 here, I think we are spending a lot of time developing  
19 an economic analysis for him without his own witness.

20               MR. LANGLEY: Your Honor, we don't need  
21 Mr. Bernanke here to authenticate this. This is a  
22 learned treatise which is admissible under the Federal

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1 Rules of Evidence.

2 JUDGE SIPPEL: Well, it's only being used  
3 for purposes of -- really purposes of cross-  
4 examination. Again, it's a question of -- I'm giving  
5 leeway on both sides. It's cross-examination, and  
6 it's a question of degree. If you let him get on and  
7 off with this, if he -- you know, if it takes too  
8 long, then I'm going to stop it. But let's see if we  
9 can get going.

10 I'm going to overrule the objection. Go  
11 ahead.

12 BY MR. LANGLEY:

13 Q Ms. Kravtin, down in the middle of the  
14 section underneath "Different Forms of Imperfect  
15 Competition," do you see where it describes  
16 monopolistic competition?

17 A Yes, and coincidentally it's talking about  
18 a power and light company.

19 Q Would you read that sentence, please? The  
20 one that begins "Closer still to perfect competition."

21 A I'm sorry, I'm looking at "perfect  
22 monopoly," "competitive ideals of pure monopoly."

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1 Are you in the next paragraph?

2 Q I'm two paragraphs down in the middle of  
3 the section entitled "Different Forms of Imperfect  
4 Competition."

5 A The second paragraph in that section?

6 Q Correct.

7 A Monopoly. Okay.

8 Q Beginning with the sentence "Closer  
9 still." Beginning with the words "closer still."

10 A Oh, yes, in the middle of that second  
11 paragraph.

12 "Closer still to perfect competition is  
13 the industry structure known as monopolistic  
14 competition, which typically consists of a relatively  
15 large number of firms that sell the same product with  
16 slight differentiations."

17 Q And, Ms. Kravtin, is that, in your  
18 understanding as an economist, the closest real thing  
19 to true competition?

20 MR. SEIVER: Objection to form. What is  
21 close?

22 JUDGE SIPPEL: If she knows. I take it it

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1 is what she read.

2 MR. SEIVER: Oh.

3 JUDGE SIPPEL: I -- this is not going to  
4 help, Mr. Seiver. I mean it's going to be much more  
5 painless.

6 MR. SEIVER: All right, Your Honor.

7 JUDGE SIPPEL: I don't want to say -- let  
8 me stop right there. Go ahead.

9 Can you answer? Is there a question?

10 THE WITNESS: Could you repeat your  
11 question, please?

12 BY MR. LANGLEY:

13 Q Is monopolistic competition the closest  
14 thing to true, perfect competition?

15 A No, I wouldn't say so.

16 Q That exists in the real world, at least?

17 A No, I stand by my answer.

18 Q Can you give us an example of something  
19 that is more competitive?

20 A Well, in the real world in which we  
21 operate -- and I testified to this on numerous  
22 occasions when I have done a market analysis -- you

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1 have these theoretical ideas, as Dr. Bernanke is  
2 saying -- talking about, to the truly competitive  
3 ideal. The monopoly ideal. And then you have all  
4 different forms, really, continuing in between of  
5 which monopolistic competition I would place probably  
6 somewhere in the center. So you have more or less if  
7 you did some sort of diagram, as we economists like to  
8 do, you know, you would have a continuum closer to  
9 truly competitive. And I tend to call that in my work  
10 more effectively or workably competitive.

11 So that's how I would describe it in my  
12 words. That you have a continuum and that you have  
13 many types of market conditions. You have to look to  
14 the specific facts and circumstances of that market in  
15 terms of where you place it on this idealistic  
16 continuum that defined the theoretical states.

17 Q And monopolistic competition falls about  
18 in the middle?

19 A No, in that midrange closer to  
20 competitive. You would have then oligopolistic,  
21 which I presume you will talk about, although I  
22 haven't read past where you directed me. But then you